SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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UNITED REALTY ADVISORS, LP, through Jacob Frydman as the assignee of its claims, PRIME UNITED HOLDINGS, LLC, and JACOB FRYDMAN,

Plaintiffs,

v.

HERRICK FEINSTEIN LLP and ARTHUR G. JAKOBY, Individually and in his official capacity as a Partner of HERRICK FEINSTEIN, LLP,

Defendants.

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Index No.

SUMMONS

To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
August 7, 2019

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VERIFIED COMPLAINT

COME NOW Plaintiffs Jacob Frydman ("Frydman"), Prime United Holdings, LLC ("Prime United"), and United Realty Advisors, LP ("United Realty", and, collectively, "Plaintiffs" or "plaintiffs"), by and through their undersigned counsel, The Law Offices of Neal Brickman, P.C., located at 420 Lexington Avenue, Suite 2440, New York, New York, 10170, and as and for their Complaint against Defendants, Herrick, Feinstein LLP ("Herrick") and Arthur G. Jakoby ("Jakoby", and, collectively "Defendants" or "defendants"), individually and in his capacity as a Partner of Herrick, state and allege as follows:

NATURE OF THE ACTION

1. This is an action for damages arising from Defendants' negligence and legal malpractice in failing to comply with an unambiguous Court-ordered deadline for expert disclosure, leading to the preclusion of essential expert reports and testimony on hacking liability and damages in a complex federal litigation, with damages totaling over $370,000,000, which has been ongoing since at least July 30, 2014. This failure to meet the Court's deadline has foreclosed Plaintiff from using experts on certain aspects of liability and on damages

quantification, which are essential to establishing and proving the underlying case. Defendants' flagrant disregard of the Court's clearly imposed deadline is malpractice which effectively crippled Plaintiffs' ability to establish their substantial damages in the underlying action.

JURISDICTION

2. This Court has jurisdiction over this matter because Defendant Herrick is a partnership duly authorized to do business in this State and maintaining principal offices in this State. In addition, the complained of decisions and actions were authorized and promulgated within the State; and because the amount in controversy exceeds the jurisdictional minimum required by this Court.

VENUE

3. This action is properly laid in New York County because Herrick maintains its primary offices in this department and, as set forth more fully herein, all of the claims asserted by Plaintiff were authorized and occurred in this County.

PARTIES

4. Plaintiff Frydman is an individual citizen of the United States with a primary residence in the State of New York.

5. Plaintiff Prime United is a Delaware Limited Liability Company organized and existing under and pursuant to the laws of the State of Delaware, with a principal place of business located at c/o Frydco Capital Group, 7 World Trade Center, 46th Floor, New York, New York 10007.

6. Plaintiff United Realty is a Delaware Limited Partnership organized and existing under and pursuant to the laws of the State of Delaware, with a principal place of business located at 410 Park Avenue, 14th Floor, New York, New York 10022.

7. Defendant Herrick is a New York Limited Liability Partnership organized and existing under and pursuant to the laws of the State of New York, with a principal place of business located at Two Park Avenue, New York, New York 10016. Defendant is a law firm engaged in providing legal services to its clients, including Plaintiffs.

8. Upon information and belief, Defendant Jakoby is an individual citizen of the United States of America, and, as such, has no interests or subsidiaries which need to be disclosed. Jakoby is an attorney licensed to practice law before this Court and in the State of New York. Jakoby was, and is, a Partner of the Herrick, Feinstein LLP firm during the events described herein.

FACTUAL BACKGROUND

A. Background and the Underlying Action, *United Realty Advisors, et al., v. Eli Verschleiser, et al.*[1]

9. Plaintiffs Frydman, Prime United, and United Realty are engaged in a "long-running and acrimonious dispute" with, *inter alia*, Frydman's previous investment partner, Eli Verschleiser ("Verschleiser"), companies Verschleiser controls, and other individuals. (ECF Dkt. 294 at 1).

10. As a result of this ongoing and unresolved dispute, Plaintiffs commenced suit in the United States District Court for the Southern District of New York, 14-CV-5903 (JGK)(JLC) and 14-CV-8084 (JGK)(JLC), *United Realty Advisors, et al., v. Eli Verschleiser, et al.* ("the Underlying Action"), pursuant to which Plaintiffs assert various claims for, *inter alia*, the alleged hacking of their computer servers, purported damage caused to Frydman's business dealings as a result of wire fraud by Verschleiser, the purported theft of trade secrets as a result of the hacking,

[1] All ECF Docket numbers referred to herein refer to the Civil Docket for *United Realty Advisers, LP et al. v. Eli Verschleiser, et al.*, Consolidated Cases 1:14-cv-05903-JGK-JLC and 1:14-cv-08084-JGK-JLC, the underlying action in Plaintiffs' legal malpractice and negligence Complaint against Herrick, before Judge John G. Koeltl in the United States District Court for the Southern District of New York.

and breach of a sale and purchase agreement between Frydman and Verschleiser. (ECF Dkt. 366 at 5:18-25; 6:11-3).

11. Plaintiff's Complaint includes, among other things, claims under the Racketeer Influenced Corrupt Organizations Act, 18 U.S.C. §§ 1961 *et seq.* ("RICO"), the Computer Fraud and Abuse Act, 18 U.S.C. §§ 1030 *et seq.* ("CFAA"), the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510 et seq. ("ECPA"), the Stored Communications Act, 18 USC §§ 2701 *et seq.* ("SCA"), and various contract and tort claims under state law.

12. Briefly, from 2011 until December 2013, Frydman and Verschleiser were partners in several business entities, including broker-dealer Cabot Lodge Securities, LLC ("CLS"); a public non-traded real estate investment trust (a "REIT"); Prime United; United Realty Trust, Inc.; United Realty, advisor to the REIT; and United Realty Advisor Holdings, LLC.

13. On December 2, 2013, Frydman sent Verschleiser a letter terminating Verschleiser's employment with United Realty. Verschleiser alleges that he served Frydman with a similar letter prior to Frydman's letter.

14. On or about December 4, 2013, Frydman and Verschleiser executed a membership interests sale and purchase agreement (the "Agreement") dated December 3, 2013.

15. This Agreement, *inter alia*, rescinded all termination letters by both parties, obligated Verschleiser to return the Plaintiffs' computer servers to their status as of November 15, 2013, and to provide Frydman all relevant owner and administrative passwords to the computer networks by December 5, 2013.

16. This Agreement also contained mutual nondisparagement and confidentiality provisions, and a nonsolicitation provision directed toward Verschleiser.

17. According to the record in the Underlying Action, Verschleiser did not restore United Realty's computer systems or provide Frydman the required passwords by December 5, 2013, as required by the Agreement.

18. After the execution of the Agreement, someone using email and IP addresses associated with Verschleiser hacked into Frydman and United Realty's computer systems, obtaining and deleting information. In addition, someone using an IP address associated with Verschleiser contacted Opera Solutions, a potential sublessor of Plaintiffs' office space, and disparaged Frydman. Furthermore, Verschleiser and others working with him allegedly beagan to make false and fraudulent claims against Frydman and United Realty on false websites, blogs and other internet postings. Lengthy and active litigation ensued.

19. On July 10, 2015, Plaintiffs filed a Consolidated Second Amended Complaint in the Underlying Action ("Second Amended Complaint," See ECF Dkt. 71).

20. In or about September of 2016, Herrick agreed to represent all three of the Plaintiffs in the Underlying Action.

21. On or about September 8, 2016, over a year after the filing of the Second Amended Complaint, Herrick filed a Notice of Appearance for Plaintiffs United Realty and Prime United in the Underlying Action. At this point, there were already a number of discovery disputes underway, including, *inter alia*, contested depositions and document production.

22. There is no written retainer agreement or engagement letter by, between, or among Plaintiffs and Herrick related to the Underlying Action.

B. <u>Herrick Appears and Ultimately Cripples the Underlying Litigation</u>

23. On October 6, 2016, Magistrate Judge James L. Cott ("USMJ Cott") held a Conference, setting the deadlines for fact discovery in the Underlying Action for December 16,

2016 and expert discovery for January 20, 2017. (ECF Dkt. 214 at 75-6). Jakoby represented Plaintiffs at that Conference.

24. On October 7, 2016, USMJ Cott issued an Order in the Underlying (consolidated) Action, memorializing the discovery deadlines discussed at the October 6, 2016 Conference as follows: "(1) all fact discovery to be completed by December 16, 2016; (2) parties must exchange expert reports by December 16, 2016, and all expert discovery must be completed by January 20, 2017." (ECF Dkt. 195). This Order came with the following warning, underlined and clearly written on the first page: "These deadlines will not be extended under any circumstances." (emphasis in original) (*Id.*) The Docket shows Jakoby was electronically noticed on this Order.

25. On October 27, 2016, all parties held a Telephone Conference with USMJ Cott, wherein the fact discovery deadline was extended until January 20, 2017 so that fact and expert discovery would conclude on the same date. (ECF Dkt. 214 at 20-1, see ECF Dkt. 212).

26. Upon information and belief, at or around the same time, Herrick determined that Plaintiffs' case in the Underlying Action would require the testimony of two different types of experts -- one expert who would interpret the InterMedia logs[2] which were Plaintiffs' evidence of the computer hacking allegations, and another expert who would provide a damages estimate, quantifying all damages alleged in the Second Amended Complaint.

27. During this period, it is undisputed that the parties in the Underlying Action continued to have a number of disputes regarding the timing of depositions and other discovery issues, among other things.

[2] Specifically, this report would interpret the InterMedia logs for United Realty's server and Verschleiser's corporate servers. (ECF Dkt. 272 at 28). The logs are the digital trail of the hacking; however, in and of themselves they are difficult to interpret. *Id.* The logs, in total, consist of over 58,167 lines of small font data which, if printed, would comprise approximately 8,684 pages. *Id.*

28. On November 20, 2016, to document the ongoing discovery issues, Jakoby wrote a letter to the Court requesting, *inter alia*, that the Court order the defendants to go forward with five (5) different pending depositions. ("November 20, 2016 Letter," ECF Dkt. 220).

29. Buried in footnote 9, on page four (4) of the November 20, 2016 letter, was the following sentence: "At the Court's October 27th conference call, the Court, when extending fact discovery until January 20th advised the parties to work together on expert discovery deadlines. Mr. Gulko during our November 18th phone call agreed that we need not submit any expert reports to him until January 2017." (*Id.*)

30. Mr. Gulko did not represent all of the defendants in the Underlying Action. He represented only Ophir Pinhasi, Alexandru Onica, and Raul Del Forno. Jakoby did not request in the November 20, 2016 Letter, or otherwise, that the Court amend its October 7, 2016 Order requiring the exchange of expert reports by December 16, 2016.

31. On or about October 17, 2016, Herrick retained K2 Intelligence, LLC ("K2 Intelligence") to provide expert support and consulting services, including preparation of an expert report on the hacking allegations, on behalf of "Jacob Frydman, ("Client")," one of Herrick's clients.

32. Notwithstanding the fact that the October 7, 2016 Order required the parties to exchange expert reports by December 16, 2016, Herrick did not retain a damages expert until December 8, 2016.

33. On or about December 8, 2016, Herrick signed a retainer agreement with Berkeley Research Group ("BRG") to provide expert support and consulting services, including preparation of an expert report, on quantification of damages for Frydman, United Realty, and Prime United, denoted in that agreement as "Clients" of Herrick.

34. Herrick represented all three Plaintiffs in retaining experts and in assisting in the preparation of their reports. Plaintiffs paid hundreds of thousands of dollars to BRG and K2 Intelligence to have these reports prepared.

35. Despite the expense of having the expert reports prepared, and its knowledge of the Court-imposed December 16, 2016 deadline, at no point throughout this process did Herrick ever ask or petition the Court to extend the expert disclosure deadline. In fact, footnote 9 of the November 20, 2016 letter is the only mention – in the myriad of papers exchanged among the parties and filed with the Court -- of any purported change in the expert report exchange deadline date until January 2017. (See ECF Dkt. 220).

36. On or about January 12, 2017, Herrick served both the BRG expert report on damages and the K2 Intelligence expert report on hacking – both of which Herrick had commissioned on behalf of all three Plaintiffs -- upon Defendants for the first time, notwithstanding the fact that the Court's deadline for expert discovery had not been changed or modified from the December 16, 2016 date -- based on the October 7, 2016 Order, and the subsequent October 27, 2016 Telephone Conference with USMJ Cott. (See ECF Dkt. 195, 212).

37. On January 17, 2017, Joshua Summers ("Summers"), then-attorney for defendants Eli Verschleiser and Multi Capital Group of Companies, LLC (collectively, the "Verschleiser Defendants"), filed a Letter Motion to strike Plaintiffs' expert reports and preclude their testimony at trial in the underlying action pursuant to Fed. R. Civ. P. 37(b)(2). (ECF Dkt. 251).

38. In Summers' letter, he very clearly iterated that he was "surprised" to receive the expert reports on January 12, 2017, "because, by this Court's Order, they were due on December 16, 2016," and "[i]n fact, the discovery cut-off date in this action is only days away on January 20, 2017." (*Id.* at 1). Further, Summers quoted USMJ Cott's October 7, 2016 discovery Order,

which stated: "the Parties must exchange expert reports by December 16, 2016...These deadlines will not be extended under any circumstances." (emphasis in original) (ECF Dkt. 195). Finally, Summers noted that Plaintiffs' counsel neither communicated to his firm regarding any delay in providing expert reports, nor requested any extensions from the Court. *Id.*

39. On January 17, 2017, Avrohom Gefen ("Gefen"), attorney for Albert Akerman, another defendant in the Underlying Action, electronically filed a letter joining in the Verschleiser Defendants' January 17, 2017 Letter Motion. (ECF Dkt. 252).

40. On January 18, 2017, Jakoby, in response to the January 17, 2017 Letter Motion, electronically filed a Reply explaining that Defendants had purportedly agreed in November to extend the dates for expert reports until the second week in January, 2017, and that the Court had allegedly "left it to the parties" to figure out the exact timing for the exchange of expert reports. (ECF Dkt. 253 at 2; see ECF Dkt. 220).

41. Also on January 18, 2017, Gefen electronically filed a Reply in response to Jakoby's January 18, 2017 Letter, agreeing with Summers that "the Plaintiffs violated the Court's Order and served their expert reports nearly a month late," and, as a result, "[t]he Plaintiffs' experts' reports and testimony should therefore be precluded from trial pursuant to Fed. R. Civ. P. 37(b)(2)(ii)."(ECF Dkt. 254 at 4).

42. Next, on January 18, 2017, Summers electronically filed a Reply in further support of the Verschleiser Defendants' motion to strike the Plaintiffs' expert reports and preclude their testimony at trial in the underlying action. (ECF Dkt. 257). This letter confirmed that "prior to Mr. Jakoby's allegations, [Summers, as counsel for the Verschleiser Defendants] had never heard of any extension of discovery deadlines beyond December 16, 2016." (*Id.* at 1).

43. Finally, on January 18, 2017, USMJ Cott issued an Order, granting the Verschleiser Defendants' motion to strike the expert reports as untimely, barring both expert witness reports commissioned by Herrick and barring Plaintiffs from using those individuals as expert witnesses in the Underlying Action. ("January 18, 2017 Order," ECF Dkt. 258).

44. In the January 18, 2017 Order, USMJ Cott noted that "simply providing 'notice' to the Court, as Plaintiffs purportedly did in its November 20 letter to the Court, is hardly tantamount to an extension request." (*Id.* at 4). Further, USMJ Cott found that "[Plaintiffs'] belated disclosures cannot be justified on the record before this Court." (*Id.* at 5).

45. Also in the January 18, 2017 Order, USMJ Cott noted that Herrick's purported agreement with Gulko "was, by their own admission, not with all defense counsel," and "[t]hat, in itself, raises concern about the legitimacy of the Agreement and Plaintiffs' reliance on it." (*Id.* at 3).

46. Finally, in the same Order, USMJ Cott also observed that "the Court's greater concern here is that Plaintiffs essentially take it upon themselves to override an explicit order of the Court, never modified, that the expert disclosures were due by December 16. Nothing the Court said at the October 27 conference changed the schedule." (*Id.*)

C. Herrick's Negligence Comes to Light

47. First, Herrick did not retain BRG to provide expert support and consulting services, including preparation of an expert report on quantification of damages, until December 8, 2016, eight (8) days prior to the December 16, 2016 expert report deadline set by USMJ Cott. (See ECF Dkt. 195).

48. Herrick did not retain K2 Intelligence to provide expert support and consulting services, including preparation of an expert report on Defendants' liability for the hacking allegations, until October 17, 2016.

49. It seems unlikely that Herrick ever had any intention of complying with the Court's December 16, 2016 deadline for expert reports, given the timing of those experts' retention.

50. Further, Herrick may have made an alleged agreement to extend the expert disclosure deadline with Gulko, but that agreement was indisputably neither with all defense counsel, nor with the knowledge, consent, or approval of the Court. (See, *e.g.*, ECF Dkt. 220).

51. In addition, Herrick claimed that the Court had essentially given the parties the opportunity to modify the schedule and "figure out the exact timing for expert reports." (See ECF Dkt. 258 at 4). This is insupportable, as Herrick -- which is a firm of experienced trial lawyers -- "cannot have reasonably thought" that a schedule enabling Plaintiffs to make disclosures a mere eight (8) days prior to the close of expert discovery would afford Defendants sufficient time to digest the reports and take depositions of the experts if they had wanted to." (*Id.*)

52. Despite its rebukes of Defendants' counsel for perceived delay tactics and lack of cooperation with discovery, despite its concession that expert reports are "essential to assisting the finder of fact with interpreting the data" from the Intermedia Logs which were the "digital trail of the hacking," and despite the Court's multiple admonitions that such expert reports would be due by December 16, 2016, with no further extensions, Herrick let the deadline pass without serving either expert report.

53. Finding Herrick's reasons for its abject failure to meet the critical expert discovery deadline unpersuasive, on January 18, 2017, USMJ Cott granted the motion to strike the expert reports as untimely, as noted, stating, in relevant part, simply that Plaintiffs' "belated disclosures cannot be justified on the record before this Court." (ECF Dkt. 258 at 5).

54. On January 24, 2017, Herrick wrote a letter to Judge Koetl pursuant to Fed. R. Civ. P. 37 and 72, advising the Court that Plaintiffs objected to USMJ Cott's January 18, 2017 Order, and to request a pre-motion conference. (ECF Dkt. 261).

55. On February 8, 2017, Herrick filed Plaintiffs' Objection to the Magistrate's Order Precluding Plaintiffs' Experts, arguing, in sum and substance, that USMJ Cott's January 18, 2017 Order was "clearly erroneous and contrary to law." ("February 8, 2017 Objection," ECF Dkt. 272).

56. On February 14, 2017, Gulko filed the Defendants' Response to the February 8, 2017 Objection ("February 14, 2017 Response," ECF Dkt. 278). Defendants argued, *inter alia*, in the February 14, 2017 Response, that: (1) USMJ Cott's January 2017 Order was not "clear error" or "contrary to law;" (2) USMJ Cott's analysis was, in fact, in line with the *Softel*[3] factors cited by Herrick in its February 8, 2017 Objection; (3) Plaintiffs' explanation for failure to comply with the December 16, 2016 deadline was insufficient; and (4) any further delay in discovery would cause significant prejudice to Defendants. (*Id.*)

57. Also, on February 14, 2017, Gulko filed his Declaration in Support of Defendants' Response to the February 8, 2017 Objection ("Gulko Declaration," ECF Dkt. 279). The Gulko Declaration included the following at paragraph 8:

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[3] *Softel, Inc. v. Dragon Med. And Sci. Commc'ns, Inc.*, 118 F.3d 955 (2d Cir.1997), the case Plaintiffs cited for the proposition that the factors enumerated therein are a method used by Federal Courts to evaluate whether the exclusion of expert testimony is proper under Rule 37(c)(1).

"...it should also be noted that Mr. Jakoby has now offered at least three (3) separate reasons for his failure to submit their expert reports on time. Most recently, Mr. Jakoby stated that he misunderstood the directives of Magistrate Judge Cott (2/3/17 Tr.21:11), but in addition, Mr. Jakoby asserts that as a result of certain alleged obstructionist tactics by defendants and/or their counsel was the reason for the delay in producing some expert reports, and finally he claims that an agreement existed between some of the parties, which extended the deadline." (*Id.* at 3).

58. The Gulko Declaration further confirmed that "there was never any agreement" between Gulko and "counsel for Plaintiff or any other party, which extended the deadline for expert reports or discovery." (*Id.* at 3).

59. Also, on February 14, 2018, Summers filed his Declaration, echoing Gulko's arguments and concluding, at paragraph 17: "The Plaintiffs have not presented a single excusable reason for their late disclosures. Magistrate Judge Cott's directions and orders were unambiguous and clear. Plaintiffs simply did not comply with them." (ECF Dkt. 280 at 5).

60. Ultimately, Herrick claimed that its failure to comply with the Court's scheduling order was: "(i) based on a reasonable interpretation of the Court's instructions; (ii) consistent with the parties' conduct, including a subsequent agreement with opposing counsel, documented [in its November 20, 2016 letter to the Court]; and (iii) the inevitable direct and intentional result of Defendants' obstruction of the discovery process." (ECF Dkt. 272, at 9).

61. On February 16, 2017, Herrick filed a Reply Memorandum in Further Support of the February 8, 2017 Objection, once again arguing, in sum and substance, that the January 18, 2017 Order was "reversible error," and that the Court should accept Plaintiffs' arguments that the Order was ambiguous, or that the parties reached an agreement whereby expert reports would be served during the second week of January. (ECF Dkt. 284).

62. On March 25, 2017, Judge Koeltl issued a Memorandum Opinion and Order overruling Plaintiffs' objections to USMJ Cott's January 18, 2017 Order striking the two expert

reports which were provided to Defendants nearly a full month after the Court-ordered deadline for expert disclosure. ("March 25, 2017 Opinion and Order," ECF Dkt. 294, see ECF Dkt. 258).

63. In the March 25, 2017 Opinion and Order, Judge Koeltl found, *inter alia*, that USMJ Cott's deadline for expert disclosure was "clear," and that "it was folly for plaintiffs to rely on a side agreement with one of the defendants without obtaining the Court's agreement to change the Court-ordered deadline." (ECF Dkt. 294 at 5).

64. In the same March 25, 2017, Judge Koeltl also found that "it is clear based on the submissions that plaintiffs were perfectly capable of engaging their experts long before December 16, 2016, and of making their expert disclosures by that deadline." (*Id.* at 8).

65. On November 28, 2017, Herrick noticed the Court of its intent to withdraw from Plaintiffs' representation. On the same date, Judge Koeltl informed all parties that USMJ Cott would hold a conference to determine timing and any other issues surrounding withdrawal and a potential charging lien. (See ECF Dkt. 360).

66. On December 1, 2017, Judge Koeltl made a Decision on three pending motions for summary judgment in the Underlying Action, one of which was a motion for summary judgment brought by the Plaintiffs in that action to determine defendants' liability inter alia under the CFAA, SCA, and ECPA. ("December 1, 2017 Decision," ECF Dkt. 371).

67. In the December 1, 2017 Decision, Judge Koeltl made a point of noting that without the "essential" hacking expert – whose report was precluded in USMJ Cott's January 18, 2017 Order – "the Court cannot determine on a motion for summary judgment whether Verschleiser hacked into the plaintiffs' computer systems based on the declaration of plaintiffs' attorney and the 'difficult to interpret' [InterMedia] log." (ECF Dkt. 371, 12:19-21; see ECF Dkt. 258).

68. It was clear from Judge Koeltl's language in the December 1, 2017 Decision that the plaintiffs had "the burden of showing that, as a matter of undisputed fact, Verschleiser hacked into the United Realty email system, as the plaintiffs allege, and the Court cannot decide that disputed factual issue on this motion for summary judgment" – because the expert reports which ostensibly would have allowed plaintiffs to prevail on that motion had been precluded, and without those reports, plaintiffs could point to "no direct evidence" of the hacking. (*Id.*, 11:15-9; 13:5).

69. Meanwhile, Herrick charged Plaintiffs more than a hundred thousand dollars ($100,000.00) in working with the experts to assist in the preparation of the reports, in unsuccessfully opposing Defendants' motion to strike those experts' reports and their testimony, and in objecting to USMJ Cott's preclusion order. All of these legal fees were rendered useless as a result of Herrick's malpractice in missing the court-ordered December 16, 2016 deadline. These fees were in addition to the hundreds of thousands of dollars that Plaintiffs paid to the now-precluded experts.

70. On December 13, 2017, Judge Koeltl signed a consent order granting Herrick's withdrawal as Plaintiffs' counsel "for good cause having been shown." (ECF Dkt. 370).

71. Upon information and belief, the "good" cause referenced above was that Frydman had become painfully aware of Herrick's malpractice, and threatened to sue Herrick for damages.

D. Herrick is Estopped From Contesting the Merits of the Underlying Action

72. This is an action for legal malpractice. Lest Herrick now try to argue that its documented negligence was harmless because Plaintiffs' case was baseless or unwinnable, it is estopped from disputing the merits of the Underlying Action.

73. By way of example, without limitation, Herrick represented to the Court that the two expert reports were "essential to plaintiffs' case on the issues of hacking (namely, interpreting the complex technical data logs provided by InterMedia) and damages." (ECF Dkt. 284 at 13).

74. By way of further example, without limitation, Herrick continued to endorse the validity of the Underlying Action, both implicitly and explicitly, in its continued representation of Plaintiffs in opposition to Defendants' various letter-motions to strike the expert reports as untimely, and to preclude the testimony of those experts at trial.

75. By way of further example, without limitation, Herrick continued to endorse the validity of the Underlying Action in its preparation and filing of Plaintiffs' Motion for Summary Judgment, and in its preparation and filing of Plaintiffs' Opposition to Defendants' Motions for Summary Judgment. (ECF Dkt. 303 and 312).

76. Upon information and belief, but for the preclusion of the expert reports and their testimony, plaintiffs' motion for summary judgment on defendants' liability under the CFAA, SCA, and ECPA would have been granted – a mistake on Herrick's part which continues to cause Plaintiffs hundreds of thousands of dollars in legal fees.

77. Specifically, Herrick represented to the Court that the report and testimony of the hacking expert, Milan Patel of K2 Intelligence, LLC ("Patel"), was "essential to assisting the finder of fact with interpreting" the hacking data "which lies at the heart of this case." (ECF Dkt. 272 at 28).

78. In addition, Herrick represented to the Court that the report and testimony of the second expert, James Farrell ("Farrell") of Berkeley Research Group, was "essential for the quantification of damages suffered by Plaintiffs as a result of defendants' conduct." (*Id.*)

Farrell's report concluded that Plaintiffs incurred significant damages as a result of Verschleiser's conduct -- $137,464,683 in damages associated with United Realty and Prime United, and $242,222,858 in damages to Frydman's loss of future investments and business reputation – a total of $379,687,541.

79. In short, Herrick repeatedly endorsed every element of the claims against Defendants in the Underlying Action, including damages of not less than $379 Million and treble damages calculated therefrom. It is therefore estopped from disputing or disavowing the underlying claims.

AS AND FOR A FIRST CAUSE OF ACTION
(Negligence/ Legal Malpractice)

80. Plaintiffs repeat, reiterate and reallege each and every allegations set forth in paragraphs "1" through "79" with the same force and effect as if fully set forth herein at length.

81. Defendants had a duty to use ordinary care in prosecuting the Underlying Action, and were specifically required, without limitation, to take all required steps necessary to preserve and advance the prosecution of Plaintiffs' claims and causes of action.

82. More specifically, Defendants were required to comply with all scheduling orders and other deadlines issued by the Court, so as not to foreclose, waive, or impair any of Plaintiffs' claims and/ or causes of action.

83. Defendants breached their duties by, *inter alia*, failing to take all required steps necessary to preserve and advance the prosecution of Plaintiffs' claims and causes of action, and by failing to comply with all scheduling orders and other deadlines issued by the Court, so as not to foreclose, waive, or impair any of Plaintiffs' claims and/ or causes of action.

84. Defendants' decision to ignore the Court's clearly stated deadlines governing expert reports is not within the purview of a "litigation strategy," and, as this Court has already

found, was neither justified nor excusable. As such, this failure constitutes actual and material negligence.

85. As a result of Defendants' legal malpractice and negligence, Plaintiffs suffered injury and harm in an amount to be determined at trial, but in no event less than $379,687,541.00 (the precluded expert's damage calculation), trebled, in compensatory damages, plus the costs of retaining the now-useless experts; Herrick's legal fees to Plaintiffs in the Underlying Action; the costs of retaining new trial counsel; the dimunition in value of the claims in the Underlying Action; the costs and disbursements of this action; attorneys' fees; all relevant interest; and any such other relief to Plaintiffs as this Court deems just and proper.[4]

JURY DEMAND

86. Plaintiffs hereby demand a jury trial of all the facts and allegations set forth herein.

Dated: New York, New York
August 7, 2019

Neal Brickman, Esq.
Jason A. Stewart, Esq.
The Law Offices of Neal Brickman, P.C.
Attorneys for Plaintiffs
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[4] By Order dated October 5, 2018 the Court granted judgment on liability against Defendant Multi Capital Group of Companies, LLC ("Multi Capital"). The full trial against the remaining Defendants is set to begin on November 12, 2019. The Court has set this as a "final" immovable date. An inquest on damages against Multi Capital will proceed after that trial.

VERIFICATION

State of New York }
} ss.:
County of New York }

Jacob Frydman, being duly sworn, deposes and says:

I am the assignee of Plaintiff United Realty Advisors, LP's claims herein. I am also the principal of Plaintiff Prime United Holdings, LLC. I am also an individual Plaintiff. I have read the foregoing Complaint and know the contents thereof. The same are true to my own knowledge, except as to matters alleged on information and belief, and as to those matters, your affiant believes them to be true.

Jacob Frydman, individually, and on Behalf of United Realty Advisors, LP and Prime United Holdings, LLC.

Sworn to before me this
6 th day of August, 2019.

NOTARY PUBLIC

DAVID ROSS SHAPIRO
Notary Public, State of New York
Reg. No. 02SH6335462
Qualified in New York County
My Commission Expires Jan. 11, 2020